

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

STATE OF OKLAHOMA,)	
)	
Plaintiff,)	
)	
v.)	Case No. 05-cv-329-GKF(SAJ)
)	
TYSON FOODS, INC., et al.,)	
)	
Defendants.)	

**STATE OF OKLAHOMA'S MOTION TO DETERMINE THE SUFFICIENCY OF
DEFENDANTS GEORGE'S, INC.'S AND GEORGE'S FARMS, INC.'S RESPONSES TO
THE STATE'S APRIL 20, 2007 REQUESTS TO ADMIT AND INTEGRATED BRIEF IN
SUPPORT THEREOF**

TABLE OF CONTENTS

I.	Introduction.....	1
II.	Legal Standard	2
III.	Argument	4
A.	The George's Defendants' general objections are unfounded	4
1.	The State's definition of "poultry waste" is not objectionable.....	4
2.	The State's definition of "your poultry growing operations" is not objectionable	6
3.	The State's use of the term "phosphorus" is not objectionable	8
4.	The State's use of the term "pathogens" is not objectionable	9
5.	The State's definition of the term "run-off" is not objectionable	10
6.	The State's use of the phrase "Waters of the State" is not objectionable...11	
7.	The State's use of the term "hazardous substances" is not objectionable ..13	
B.	The George's Defendants' General Objections not specifically incorporated into and identified in its responses should be overruled	13
C.	The George's Defendants' temporal objection should be overruled	14
D.	The George's Defendants' objections to request no. 1 should be overruled	14
E.	The George's Defendants' objections to request no. 2 should be overruled	15
F.	The George's Defendants' objections to request no. 3 should be overruled	15
G.	The George's Defendants' objections to request no. 4 should be overruled	16
H.	The George's Defendants' objections to request no. 5 should be overruled	16
I.	The George's Defendants' objections to request no. 6 should be overruled	17
J.	The George's Defendants' objections to request no. 7 should be overruled	17
K.	The George's Defendants' objections to request no. 8 should be overruled	18

L.	The George's Defendants' objections to request no. 9 should be overruled	18
M.	The George's Defendants' objections to request no. 10 should be overruled	19
N.	The George's Defendants' objections to request no. 11 should be overruled	19
O.	The George's Defendants' objections to request no. 12 should be overruled	20
P.	The George's Defendants' objections to request no. 13 should be overruled	20
IV.	Conclusion	21

TABLE OF AUTHORITIES

Cases

<i>Chapman v. California Department of Education</i> , 2002 WL 32854376, *3 (N.D. Cal. Feb. 6, 2002)	7, 8
<i>City of Tulsa v. Tyson Foods, Inc.</i> , 258 F.Supp.2d 1263, 1296-97 (N.D. Okla. 2003)	7, 8, 13
<i>Diederich v. Department of the Army</i> , 132 F.R.D. 614, 621 (S.D.N.Y. 1990).....	14
<i>Henry v. Champlain Enterprises, Inc.</i> , 212 F.R.D. 73, 77 (N.D.N.Y. 2003).....	3, 14
<i>House v. Giant of Maryland, LLC</i> , 232 F.R.D. 257, 262 (E.D. Va. 2005).....	4, 21
<i>Ice Corp. v. Hamilton Sundstrand, Inc.</i> , 2007 WL 1297120 at *16 (D. Kan. Apr. 30, 2007).....	4
<i>Lamoureux v. Genesis Pharmacy Services, Inc.</i> , 226 F.R.D. 154, 163 (D. Conn. 2004).....	3, 11
<i>Massachusetts v. Environmental Protection Agency</i> , 127 S.Ct. 1438, 1454-58 (2007).....	13
<i>Melzoni v. American Drug Stores, Inc.</i> , 2005 WL 2099810, *6 fn 3 (S.D. Ind. July 29, 2005)	2
<i>State of Georgia v. Tennessee Copper Company</i> , 206 U.S. 230, 237 (1907).....	12
<i>Swachhammer v. Sprint Corp. PCS</i> , 225 F.R.D. 658 (D. Kan. 2004)	14
<i>Tankersley v. Webster</i> , 243 P. 745, 747 (Okla. 1925)	7
<i>United States ex rel. Englund v. Los Angeles County</i> , 235 F.R.D. 675, 684 (E.D. Calif. 2006).....	4, 11

Statutes

2 Okla. Stat. § 10-9.1(B)(21)	5
2 Okla. Stat. § 10-9.1(B)(26)	12
2 Okla. Stat. § 10-9.7(B)(1)	13
2 Okla. Stat. § 10-9.7(B)(3)	13
2 Okla. Stat. § 10-9.7(B)(4)(b).....	13
42 U.S.C. § 9601(14)	14
60 Okla. Stat. § 60(A)	13
Okla. Admin. Code § 35:17-5-2	11
Okla. Admin. Code § 35:17-5-5(a)(7)(C)	11
Okla. Admin. Code § 35:17-5-5(c)	11

Other Authorities

http://www.epa.gov/OCEPAterms/pterm.html	10
Merriam Webster's Collegiate Dictionary (10th ed.).....	11
Restatement (Second) Torts § 427B	7

Rules

Fed. R. Civ. P. 36(a)	2, 3
LCvR 37.1	1

COMES NOW Plaintiff, the State of Oklahoma, ex rel. W.A. Drew Edmondson, in his capacity as Attorney General of the State of Oklahoma, and Oklahoma Secretary of the Environment, C. Miles Tolbert, in his capacity as the Trustee for Natural Resources for the State of Oklahoma under CERCLA (the "State"), and respectfully moves this Court for an order finding George's, Inc.'s and George's Farms, Inc.'s (hereinafter collectively referred to as "the George's Defendants") objections to the State's April 20, 2007 requests to admit insufficient, overruling the George's Defendants' objections, and deeming requests admitted or, alternatively, requiring the George's Defendants to respond to each of the requests without objection.¹ In support of its motion, the State states as follows:

I. Introduction

On April 20, 2007, the State served 13 requests to admit on the George's Defendants. *See* Exs. 1 & 2. These requests centered on core factual issues in the State's case against the George's Defendants. *See id.* With respect to each of the 13 requests, the George's Defendants interposed a litany of objections, primarily by incorporating their General Objections to the State's definitions. The George's Defendants then made responses to eight and answered the remaining five requests by stating that the George's Defendants "ha[ve] made a reasonable inquiry and the information known or readily knowable by [them] is insufficient to enable it to admit or deny the request." *See* Exs. 3 & 4. Although the George's Defendants have responded with some form of admission or denial for many of the requests, they conditioned all of their responses on unfounded objections. *Id.* Specifically, the Georges Defendants object as follows:

George's objects to and does not agree to, nor subject itself to, the arbitrary and extraordinary 'definitions' ascribed by the [State] to certain terms contained in

¹ Pursuant to LCvR 37.1, counsel advises the Court that the parties to this discovery dispute have met and conferred in an effort to resolve their differences but have been unable to reach an accord.

[its] April 20, 2007 discovery requests. To the extent that the definitions appearing in the [State's] April 20, 2007 discovery requests exceed the ordinary, every day and commonly understood meanings for and exceed the requirements of the Federal Rules of Civil Procedure, George's will ascribe the ordinary, every day and commonly understood meanings to such terms and will comply with the Federal Rules of Civil Procedure.

Exs. 3 & 4, p. 1. As a result of their obscufatory objections and refusal to use the straightforward definitions provided by the State, the State cannot determine exactly which facts the George's Defendants admit or deny or the basis for the George's Defendants' claimed inability to admit or deny the requests. *See, e.g., Melzoni v. American Drug Stores, Inc.*, 2005 WL 2099810, *6 fn 3 (S.D. Ind. July 29, 2005) ("Objections to responding to discovery should be direct and to the point and not made for the obvious purpose of trying to allow a watered down response to continue to muddy the facts and circumstances surrounding relevant issues"). The George's Defendants' responses are plainly insufficient under the Federal Rules.

While the George's Defendants object on other grounds as well, many of their objections focus on the definitions used in the State's requests. The definitions used in the State's requests, however, are clear, straightforward and understandable. In fact, a large number of the definitions were derived from statutory definitions. *See* Exs. 1 & 2 ("Definitions" section). Moreover, as set forth in more detail below, the George's Defendants' additional objections are unfounded. Accordingly, the George's Defendants' objections should be overruled in their entirety, and the George's Defendants should be required to respond to the requests without objection.

II. Legal Standard

Fed. R. Civ. P. 36(a) sets forth the requirements of a party responding to requests to admit:

Each matter of which an admission is requested shall be separately set forth. . . . If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering

party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify an answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states that the party has made reasonable inquiry and that the information known or readily obtainable by the party is insufficient to enable the party to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; the party may, subject to the provisions of Rule 37(c), deny the matter or set forth reasons why the party cannot admit or deny it.

Fed. R. Civ. P. 36(a) also sets forth the procedure for determining the sufficiency of a party's response to requests to admit:

The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the court determines that an objection is justified, it shall order that an answer be served. If the court determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be served. The court may, in lieu of these orders, determine that final disposition of the request be made at a pre-trial conference or at a designated time prior to trial. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

(Emphasis added.) The purpose of Fed. R. Civ. P. 36, "essentially, and hopefully, [is to] limit the factual issues in the case." *Henry v. Champlain Enterprises, Inc.*, 212 F.R.D. 73, 77

(N.D.N.Y. 2003. They are "designed to reduce trial effort and promote litigation efficiency." *Id.* "More important, the binding effect of Admissions is intended to lend clarity to the presentation of disputed facts in the litigation." *Id.*

Courts are clear that gamesmanship in responding to requests to admit should not be tolerated. As explained in *Lamoureux v. Genesis Pharmacy Services, Inc.*, 226 F.R.D. 154, 163 (D. Conn. 2004):

[W]hile qualification is permitted "where a request contains assertions which are only partially correct, a reviewing court should not permit a responding party to undermine the efficacy of the rule by crediting . . . hair-splitting distinctions

whose unarticulated goal is unfairly to burden an opposing party." *Thalheim v. Eberheim*, 124 F.R.D. 34, 35 (D. Conn. 1988). The court finds this to be just such an instance. Discovery is not the place for overly nuanced, metaphysical distinctions. Adopting Socrates' "the only true wisdom is in knowing you know nothing," one could reasonably deny all requests for admission. Our system of discovery, understandably, does not permit such a practice."

See also United States ex rel. Englund v. Los Angeles County, 235 F.R.D. 675, 684 (E.D. Calif. 2006) ("Parties may not view requests for admission as a mere procedural exercise requiring minimally acceptable conduct. They should focus on the goal of the Rules, full and efficient discovery, not evasion and word play") (citation omitted). "A party may not avoid responding based on technicalities." *Englund*, 235 F.R.D. at 684. "Requests for admission are not games of 'Battleship' in which the propounding party must guess the precise language coordinates that the responding party deems answerable." *House v. Giant of Maryland, LLC*, 232 F.R.D. 257, 262 (E.D. Va. 2005); *see also Ice Corp. v. Hamilton Sundstrand, Inc.*, 2007 WL 1297120 at *16 (D. Kan. Apr. 30, 2007) ("The party objecting to a discovery request bears the burden to show such vagueness and ambiguity. . . . Defendants could easily use their reason and common sense to interpret the phrase . . .").

III. Argument

A. The George's Defendants' general objections are unfounded

1. The State's definition of "poultry waste" is not objectionable

The George's Defendants have objected to the State's definition of "poultry waste,"² objecting that "Poultry litter is not 'waste' as that term is commonly understood but is, instead, a valuable agricultural fertilizer." The George's Defendants have further objected that the State's

² The State's definition of "poultry waste" is as follows: "'Poultry waste' means poultry excrement, poultry carcasses, feed wastes and / or any other waste associated with the confinement of poultry from a poultry feeding or growing operation." Exs. 1 & 2 (Definition 1).

"use of the phrase 'and/or any other waste associated with the confinement of poultry from a poultry feeding or growing operation' is open ended and could encompass an unknown number of things." As a result, the George's Defendants have objected that "poultry waste" is "vague, ambiguous, and misleading. As such, it is impossible for George's to understand the meaning of that term and to ascertain what it is being asked to admit or deny." The George's Defendants then state that they would have to "guess" as to what they are admitting or denying. *See* Exs. 3 & 4, p. 2.

The fact of the matter is that the definition of "poultry waste" used by the State is taken, with slight modification, from the Oklahoma Registered Poultry Feeding Operations Act. *See* 2 Okla. Stat. § 10-9.1(B)(21)³ It is under the Oklahoma Registered Poultry Feeding Operations Act that growing operations in Oklahoma for which the George's Defendants are legally responsible are regulated. The State's definition is clear, straightforward, and consistent with the terminology set forth in the statutes and regulations governing poultry growing operations in the IRW.⁴

³ The only changes from the statutory definition have been to change the word "or" to "and / or" and to change the phrase "poultry feeding operation" to "poultry feeding or growing operation." Neither of these materially changes the substance of the definitions.

⁴ The term "poultry waste" is also widely used throughout the industry. For example, the Poultry Water Quality Protection Handbook prepared under the direction of the Poultry Water Quality Consortium members repeatedly makes reference to "poultry waste." *See, e.g.,* Ex. 5 at PIGEON.0497 ("The expansion of the industry coupled with concentrating the growing operations has created a unique challenge -- that of proper disposal of immense quantities of waste. It is important for producers and others to understand how poultry waste can pollute the environment") & PIGEON.0514 ("Agricultural activities, including the production of poultry wastes, may be increasingly responsible for contributing excess nutrients (especially nitrogen and phosphorus) to our water resources"). There has also been an annual National Poultry Waste Management Symposium. *See, e.g.,* Ex. 6. Moreover, North Carolina State University has an Animal & Poultry Waste Management Center. *See* Ex. 7.

Moreover, in the recent corporate representative deposition of the George's Defendants, counsel for the State defined how the State was using the term "poultry waste" as follows:

. . . I'm going to use the term poultry waste throughout this deposition. Your counsel has objected to that as part of their objections in their letter. I want to explain to you what I mean by that and then so when I do use it, you'll understand the term as I'm using it. I use it to mean poultry excrement, the bedding material, feed waste or any other waste associated with the confinement of poultry in a grow house which is removed periodically from the grow house and used or disposed of elsewhere. Do you understand that meaning of the term poultry waste, sir?

Ex. 8 (McClure Depo, 12:12-23). The deponent, Benny Lloyd McClure, responded, "I understand what you are calling poultry waste." Ex. 8 (McClure Depo., 12:24-25). While the wording of the deposition question is not identical to the State's definition as set forth in its requests for admission, the meaning is clearly the same. In response, the George's Defendants admit that they understand the term and how the State is using it. Objecting to a request for admission by claiming that the George's Defendants do not understand the term "poultry waste" is, therefore, disingenuous.

2. The State's definition of "your poultry growing operations" is not objectionable

The George's Defendants have objected that the State's definition of "your poultry growing operations"⁵ is "incorrect and misleading" and ignores "the distinction between poultry farms owned and operated by a poultry integrator and farms owned and operated by independent contract growers." The George's Defendants further object that responding to "requests about

⁵ The State has defined "your poultry growing operations" as follows: "'Your poultry growing operations' means [the George's Defendants'] poultry growing operations and / or poultry growing operations under contract with [the George's Defendants]." Exs. 1 & 2 (Definition 2).

operations or things that do not belong to George's . . . is a burden that exceeds the Federal Rules of Civil Procedure." *See* Exs. 3 & 4, p. 2.

The State's definition does not, contrary to the George's Defendants' suggestion, assert that poultry growing operations under contract with the George's Defendants are owned by the George's Defendants. The States' definition merely identifies the two types of operations for which the State contends the George's Defendants are legally answerable in this action.⁶ Defining "your poultry growing operations" in the manner the State has is, therefore, entirely appropriate and within the scope of the Federal Rules. The George's Defendants are not entitled to rewrite the definition to suit its desires. *See, e.g., Chapman v. California Department of Education*, 2002 WL 32854376, *3 (N.D. Cal. Feb. 6, 2002) (on motion to compel responses to interrogatories, court states that "[t]he proponent of discovery is master of its terms. So long as the information sought is within the broad bounds or relevancy as set forth in Rule 26 and is

⁶ The George's Defendants are responsible as a matter of law for the poultry waste generated by the growing operations for the known or foreseeable contract activities of its growers. As set forth in Restatement (Second) Torts § 427B ("Work Likely To Involve Trespass Or Nuisance"):

One who employs an independent contractor to do work which the employer knows or has reason to know to be likely to involve a trespass upon the land of another or the creation of a public or a private nuisance, is subject to liability for harm resulting to others from such trespass or nuisance.

See, e.g., Tankersley v. Webster, 243 P. 745, 747 (Okla. 1925) ("... where the performance of [a] contract, in the ordinary mode of doing the work necessarily or naturally results in producing the . . . nuisance which caused the injury, then the employer is subject to the same liability to the injured party as the contractor"); *City of Tulsa v. Tyson Foods, Inc.*, 258 F.Supp.2d 1263, 1296-97 (N.D. Okla. 2003), *subsequently vacated in connection with settlement* ("... the Court finds Poultry Defendants had 'reason to recognize that, in the ordinary course of [the growers] doing the work in the usual or prescribed manner, the trespass or nuisance is likely to result.' . . . Accordingly, the Court grants plaintiffs' motion for partial summary judgment on the issue of the Poultry Defendants' vicarious liability for any trespass or nuisance created by their growers because they were aware that in the ordinary course of doing the contract work, a trespass or nuisance was likely to result.") (citations omitted).

otherwise properly discoverable, the respondent may not unilaterally reshape or rephrase the discovery request").

3. The State's use of the term "phosphorus" is not objectionable

The George's Defendants have objected that the State's definition of "phosphorus"⁷ is "vague and ambiguous and lacks the degree of specificity required to enable [the George's Defendants] to readily ascertain what [they are] being asked to admit or deny." The George's Defendants then go on to rewrite the State's definition to include only "elemental phosphorus, Atomic Number 15 on the Periodic Table of Elements." *See* Exs. 3 & 4, pp. 2-3. The State's definition is, however, consistent with the *City of Tulsa* decision holding that phosphorus compounds are included within the term phosphorus for purposes of CERCLA. *See City of Tulsa*, 258 F.Supp.2d at 1283-85. It is also consistent with usage in the industry. *See, e.g.*, Ex. 5 at PIGEON.0514 ("Poultry wastes also contain significant amounts of phosphorus"). The George's Defendants are not permitted to rewrite the State's requests in order to write out a term they do not like. *See, e.g., Chapman*, 2002 WL 32854376, *3.

Moreover, in its filings in the instant action, the George's Defendants themselves have used the term "phosphorous" to include phosphates or phosphorus compounds. *See* Third-Party Complaint, ¶ 3 [DKT # 80] ("[I]t is clear that Plaintiffs [sic] are asserting that any conduct within the IRW which results in the release of phosphates or phosphorus-containing compounds (hereinafter referred to collectively as 'phosphorous') . . . "). Moreover, in the deposition of their corporate representative, the George's Defendants testified as follows:

Q: And when you use the term phosphorus in your office, what are you referring to?

⁷ The State has defined the term "phosphorus" as follows: "'Phosphorus' means phosphorus, phosphate and / or phosphorus compounds." Exs. 1 & 2 (Definition 3).

Mr. Graves: Object to the form.

A: When I would use it in casual conversation, I would be referring to P205, what you would test for in a soil test.

Q: Okay, and that's commonly referred to in soil tests as total P expressed as P205; is that a fair statement?

Mr. Graves: Object to the form.

A: That would be a fair statement.

Q: And when would you in your conversations as a live manager or broiler live manager use the term phosphorus meaning elemental phosphorus; how would you use that?

Mr. Graves: Object to the form.

A: I can't recall ever talking in my office specifically about elemental phosphorus.

Q: Okay. When you refer to P205, what do you call it?

A: When I refer to it, I call it phosphorus.

Q: Okay. Is that a common understanding of the use of that term within George's?

A: That would be a common layman's term.

Q: And those -- of those used -- by those used in George's company?

Mr. Graves: Object to the form.

A: Yes.

Ex. 8 (McClure Depo., at 43:4-44:6). To argue that the State's definition of "phosphorus" is "vague and ambiguous" and "lacks the degree of specificity to enable [the George's Defendants] to readily ascertain what it is being asked to admit or deny" is therefore disingenuous.

4. The State's use of the term "pathogens" is not objectionable

The George's Defendants have objected that the State's definition of "pathogens"⁸ is "overly broad, ambiguous, and misleading" -- without detailing any reason why. *See* Exs. 3 & 4, p. 3. Contrary to the George's Defendants' objection, however, the core of the State's definition is derived from an EPA definition. *See* <http://www.epa.gov/OCEPAterms/pterm.html> (defining

⁸ The State has defined "pathogens" as follows: "'Pathogens' means microorganisms (e.g., bacteria, viruses, or parasites) that can cause disease in humans, animals and plants including, but not limited to, total coliforms, fecal coliforms, fecal streptococci (including individual species), enterococci (including individual species), *Escherichia coli*, *Campylobacter jejuni*, *Salmonella* sp., *Brevibacterium* sp., *Staphylococcus aureus*, *Shigella* sp., *Cryptosporidium parvum*, and / or *Listeria monocytogenes*." Exs. 1 & 2 (Definition 4).

"pathogens" as "[m]icroorganisms (e.g., bacteria, viruses, or parasites) that can cause disease in humans, animals and plants"). It is neither overly broad nor ambiguous. Nor is it misleading. Given the lack of specificity of the George's Defendants' objection, it is nearly impossible for the State to comprehend this objection. It should be overruled.

5. The State's definition of the term "run-off" is not objectionable

The Georges' Defendants have objected that the State's definition of "run-off"⁹ "[a]s defined and used in the discovery requests . . . is not stated with the requisite degree of specificity to enable [the George's Defendants] to determine what is being asked of [them]."

The George's Defendants further object that the State's use of the term "release" within the definition is "incorrect and misleading" as the term is a term of art used in CERCLA, where "the application of fertilizer has been specifically excluded" from the term "release." *See* Exs. 3 & 4, p. 3.

The State's definition of "run-off" is taken, with slight modification, from the administrative regulations implementing the Oklahoma Registered Poultry Feeding Operations Act. *See* Okla. Admin. Code § 35:17-5-2 ("Runoff means any release by leaking, escaping, seeping, or leaching of poultry waste into waters of the State"). "Run-off" of poultry waste is prohibited under the Oklahoma law that governs the poultry growing operations in Oklahoma for which the George's Defendants are legally responsible. *See* Okla. Admin. Code § 35:17-5-5(a)(7)(C) (" . . . Runoff of poultry waste from the application site is prohibited"); Okla. Admin. Code § 35:17-5-5(c) ("Storage and land application of poultry waste shall not cause a discharge or runoff of significant pollutants to waters of the State or cause a water quality violation to

⁹ The State has defined the term "run-off" as follows: "'Run-off' means any release by leaking, escaping, seeping, or leaching of poultry waste, directly or indirectly, into Waters of the State." Exs. 1 & 2 (Definition 5).

waters of the State"). The State's definition of the term "run-off" is therefore appropriate and requires a clear response without objection.

The George's Defendants objection to the State's definition of "run-off" on the ground the definition uses the word "release" is also unfounded. There is nothing in the State's definition to lead one to believe that the word "release" is being used in anything other than its plain English meaning. *See* Merriam Webster's Collegiate Dictionary (10th ed.) ("the state of being freed"). The George's Defendants effort to create ambiguity by attempting to engraft a CERCLA meaning to a word being used within the definition of another term is simply an impermissible rewrite of the State's definition. In any event, even in the CERCLA context, implicit in the George's Defendants' objection is the unsubstantiated and erroneous contention that all poultry waste for which the George's Defendants is legally responsible under CERCLA falls within the "normal application of fertilizer" exception of CERCLA; poultry waste, however, plainly can by definition result in a "release" under CERCLA. Simply put, the George's Defendants' objection to the definition of "run-off" is improper. *See Lamoureux*, 226 F.R.D. at 163; *Englund*, 235 F.R.D. at 684.

6. The State's use of the phrase "Waters of the State" is not objectionable

The George's Defendants have objected to the State's definition of "Waters of the State"¹⁰ on the ground that it is allegedly "overly broad, vague and ambiguous in that it includes each and

¹⁰ The State's definition of "Waters of the State" is as follows: "'Waters of the State' means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, storm sewers and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through or border upon Oklahoma or any portion thereof, and shall include under all circumstances the waters of the United States which are contained within the boundaries of, flow through or border upon Oklahoma or any portion thereof. Process wastewaters shall not be considered as Waters of the State if contaminated at the site." Exs. 1 & 2 (Definition 6).

every waterbody in the state regardless of location or ownership." *See* Exs. 3 & 4, p. 3. This objection is frivolous. The definition of "Waters of the State" is taken verbatim from 2 Okla. Stat. § 10-9.1(B)(26). 2 Okla. Stat. § 10-9.1(B)(26) is part of the Oklahoma Registered Poultry Feeding Operations Act. Poultry growing operations in Oklahoma for which the George's Defendants are legally responsible are regulated under the Oklahoma Registered Poultry Feeding Operations Act. The term is neither "overly broad" nor "vague and ambiguous." In fact, provisions of the Oklahoma Registered Poultry Feeding Operations Act under which poultry growing operations in Oklahoma for which the George's Defendants are legally responsible provide that "[t]here shall be no discharge of poultry waste to waters of the state," 2 Okla. Stat. § 10-9.7(B)(1) (emphasis added), that "[n]o waters of the state shall come into direct contact with the poultry confined on the poultry feeding operation," 2 Okla. Stat. § 10-9.7(B)(3) (emphasis added), and that "[p]oultry waste handling, treatment, management and removal shall . . . not result in the contamination of waters of the state," 2 Okla. Stat. § 10-9.7(B)(4)(b) (emphasis added).

Moreover, this objection is unfounded for the reasons set forth in "State of Oklahoma's Response to 'Motion of Tyson Foods, Inc., Tyson Poultry, Inc., Tyson Chicken, Inc., Cobb-Vantress, Inc., Simmons Foods, Inc., Willow Brook Foods, Inc., Cal-Maine Foods, Inc., Cal-Maine Farms, Inc., George's, Inc., George's Farms, Inc., Peterson Farms, Inc., Cargill Turkey Production, LLC, and Cargill, Inc., for Partial Judgment as a Matter of Law Based on Plaintiff's Lack of Standing'" [DKT # 1111], which is hereby incorporated. Not only does the State have a property interest in "water running in a definite stream, formed by nature over or under the surface" in Oklahoma, *see* 60 Okla. Stat. § 60(A), but also as explained in *State of Georgia v. Tennessee Copper Company*, 206 U.S. 230, 237 (1907), "the state has an interest independent of

and behind the titles of its citizens, in all the earth and air within its domain." This latter principle was recently reaffirmed in *Massachusetts v. Environmental Protection Agency*, 127 S.Ct. 1438, 1454-58 (2007). Accordingly, the George's Defendants' objection to the term "Waters of the State" should be overruled.

7. The State's use of the term "hazardous substances" is not objectionable

The George's Defendants have objected to the State's use of the term "hazardous substances" on the ground that it is allegedly "overly broad, vague, ambiguous and lacks the degree of specificity and particularity required to allow [the George's Defendants] to ascertain what is being asked to admit or deny." The George's Defendants then refuse to "guess or hypothesize about [the State's] understanding of the term 'hazardous substances.'" Exs. 3 & 4, p. 3. The term "hazardous substance," however, has not been used by the State in a vacuum in its request. Rather, the term is defined by the State within the context of CERCLA: "hazardous substances' within the meaning of CERCLA." See Exs. 1 & 2 (RTA 2).¹¹ The term "hazardous substance" is defined in CERCLA. See 42 U.S.C. § 9601(14). Further, there are numerous cases applying the definition "hazardous substance." See, e.g., *City of Tulsa v. Tyson Foods, Inc.*, 258 F.Supp.2d 1263, 1283-85 (N.D. Okla. 2003), *vacated in connection with settlement*. Its meaning is well-established. Assertions by the George's Defendants that the term "hazardous substance" is vague, ambiguous and overly broad, therefore, are without merit.

B. The George's Defendants' General Objections not specifically incorporated into and identified in its responses should be overruled

In each and every response given by the George's Defendants, the response is "[s]ubject to and without waiving the General Objections." See Exs. 3 & 4. Objections to requests for

¹¹ CERCLA is defined in the State's requests. See Exs. 1 & 2 (Definition 7).

admissions "must be directed and specifically related to a specific request. General objections without any reference to a specific request to admit are meritless." *Henry*, 212 F.R.D. at 78; *see also Swachhammer v. Sprint Corp. PCS*, 225 F.R.D. 658 (D. Kan. 2004) (holding that General Objections to interrogatories where "the objecting party makes no meaningful effort to show the application of any such theoretical objection" are meritless on their face). Accordingly, the General Objections not specifically identified in and/or incorporated into the response to the request should be overruled.

C. The George's Defendants' temporal objection should be overruled

The George's Defendants have asserted a General Objection to each of the State's 13 requests on the ground that they are "unlimited in time and, therefore, are overly broad, unduly burdensome and impossible to answer." Exs. 3 & 4, p. 1. This temporal objection is without merit for the reasons set forth in "State of Oklahoma's Motion to Compel Cargill, Inc. and Cargill Turkey Production, LLC to Respond to Its July 10, 2006 Set of Requests for Production and Integrated Brief in Support" [DKT # 1120], which is incorporated herein. *See also Diederich v. Department of the Army*, 132 F.R.D. 614, 621 (S.D.N.Y. 1990) ("To the extent that plaintiff fails to specify a time period, defendant must construe the request [to admit] to refer to the relevant time period covered by the complaint").

D. The George's Defendants' objections to request no. 1 should be overruled

Request no. 1 reads: "Admit that poultry waste from one or more of your poultry growing operations has been spread on land located within the Illinois River Watershed." Exs. 1 & 2. The George's Defendants have responded to the request subject to and without waiving their General Objections. *See* Exs. 3 & 4, p. 4. As a result of the litany of objections set forth in the General Objections and the lack of specificity as to which general objections apply to their

responses, the State is unable to discern exactly what the George's Defendants admit or deny. As set forth above in sections III.A through III.C, the George's Defendants' objections to request no. 1 are without merit and should be overruled. The State is entitled to a proper and straightforward answer to its request.

E. The George's Defendants' objections to request no. 2 should be overruled

Request no. 2 reads: "Admit that poultry waste from one or more of your poultry growing operations that has been spread on land located within the Illinois River Watershed contains one or more 'hazardous substances' within the meaning of CERCLA." Exs. 1 & 2. The George's Defendants have responded to the request subject to and without waiving their General Objections. Exs. 3 & 4, p. 4. As a result of the litany of objections set forth in the General Objections and the lack of specificity as to which general objections apply to their responses, the State is unable to discern whether the George's Defendants' inability to respond derives from lack of information or because of the alleged deficiencies in the State's request. As set forth above in sections III.A through III.C, the George's Defendants' objections to request no. 2 are without merit and should be overruled. The State is entitled to a proper and straightforward answer to its request.

F. The George's Defendants' objections to request no. 3 should be overruled

Request no. 3 reads: "Admit that poultry waste from one or more of your poultry growing operations that has been spread on land located within the Illinois River Watershed contains pathogens." Exs. 1 & 2. The George's Defendants have responded to the request subject to and without waiving their General Objections. Exs. 3 & 4, p. 4. As a result of the litany of objections set forth in the General Objections and the lack of specificity as to which general objections apply to their responses, the State is unable to discern whether the George's

Defendants' inability to respond derives from lack of information or because of the alleged deficiencies in the State's request. As set forth above in sections III.A through III.C, the George's Defendants' objections to request no. 3 are without merit and should be overruled. The State is entitled to a proper and straightforward answer to its request.

G. The George's Defendants' objections to request no. 4 should be overruled

Request no. 4 reads: "Admit that poultry waste from one or more of your poultry growing operations that has been spread on land located within the Illinois River Watershed contains phosphorus." Exs. 1 & 2. The George's Defendants have responded to the request subject to and without waiving their General Objections. Exs. 3 & 4, p. 5. As a result of the litany of objections set forth in the General Objections and the lack of specificity as to which general objections apply to their responses, the State is unable to discern exactly what the George's Defendants admit or deny. As set forth above in sections III.A through III.C, the George's Defendants' objections to request no. 4 are without merit and should be overruled. The State is entitled to a proper and straightforward answer to its request.

H. The George's Defendants' objections to request no. 5 should be overruled

Request no. 5 reads: "Admit that poultry waste from one or more of your poultry growing operations that has been spread on land located within the Illinois River Watershed has run-off from the land upon which it has been applied." Exs. 1 & 2. The George's Defendants have responded to the request subject to and without waiving their General Objections. Exs. 3 & 4, p. 5. As a result of the litany of objections set forth in the General Objections and the lack of specificity as to which general objections apply to their responses, the State is unable to discern exactly what the George's Defendants admit or deny. As set forth above in sections III.A

through III.C, the George's Defendants' objections to request no. 5 are without merit and should be overruled. The State is entitled to a proper and straightforward answer to its request.

I. The George's Defendants' objections to request no. 6 should be overruled

Request no. 6 reads: "Admit that poultry waste from one or more of your poultry growing operations that has been spread on land located within the Oklahoma portion of the Illinois River Watershed has run-off from the land upon which it has been applied." Exs. 1 & 2. The George's Defendants have responded to the request subject to and without waiving their General Objections. Exs. 3 & 4, p. 5. As a result of the litany of objections set forth in the General Objections and the lack of specificity as to which general objections apply to their responses, the State is unable to discern exactly what the George's Defendants admit or deny. As set forth above in sections III.A through III.C, the George's Defendants' objections to request no. 6 are without merit and should be overruled. The State is entitled to a proper and straightforward answer to its request.

J. The George's Defendants' objections to request no. 7 should be overruled

Request no. 7 reads: "Admit that one or more 'hazardous substances' within the meaning of CERCLA contained in poultry waste from one or more of your poultry growing operations that has been spread on land located within the Illinois River Watershed has run-off from the land upon which it has been applied." Exs. 1 & 2. The George's Defendants have responded to the request subject to and without waiving their General Objections. Exs. 3 & 4, p. 5. As a result of the litany of objections set forth in the General Objections and the lack of specificity as to which general objections apply to their responses, the State is unable to discern whether the George's Defendants' inability to respond derives from lack of information or because of the alleged deficiencies in the State's request. As set forth above in sections III.A through III.C, the

George's Defendants' objections to request no. 7 are without merit and should be overruled. The State is entitled to a proper and straightforward answer to its request.

K. The George's Defendants' objections to request no. 8 should be overruled

Request no. 8 reads: "Admit that pathogens contained in poultry waste from one or more of your poultry growing operations that has been spread on land located within the Illinois River Watershed has run-off from the land upon which it has been applied." Exs. 1 & 2. The George's Defendants have responded to the request subject to and without waiving their General Objections. Exs. 3 & 4, p. 6. As a result of the litany of objections set forth in the General Objections and the lack of specificity as to which general objections apply to their responses, the State is unable to discern whether the George's Defendants' inability to respond derives from lack of information or because of the alleged deficiencies in the State's request. As set forth above in sections III.A through III.C, the George's Defendants' objections to request no. 8 are without merit and should be overruled. The State is entitled to a proper and straightforward answer to its request.

L. The George's Defendants' objections to request no. 9 should be overruled

Request no. 9 reads: "Admit that phosphorus contained in poultry waste from one or more of your poultry growing operations that has been spread on land located within the Illinois River Watershed has run-off from the land upon which it has been applied." Exs. 1 & 2. The George's Defendants have responded to the request subject to and without waiving their General Objections. Exs. 3 & 4, p. 6. As a result of the litany of objections set forth in the General Objections and the lack of specificity as to which general objections apply to their responses, the State is unable to discern exactly what the George's Defendants admit or deny. As set forth above in sections III.A through III.C, the George's Defendants' objections to request no. 9 are

without merit and should be overruled. The State is entitled to a proper and straightforward answer to its request.

M. The George's Defendants' objections to request no. 10 should be overruled

Request no. 10 reads: "Admit that poultry waste contributes a greater amount of phosphorus to the portion of the Illinois River located in Oklahoma than waste water treatment plants, cattle manure, manure from wildlife, septic systems, commercial fertilizers and stream bank erosion combined." Exs. 1 & 2. The George's Defendants have responded to the request subject to and without waiving their General Objections. Exs. 3 & 4, p. 6. As a result of the litany of objections set forth in the General Objections and the lack of specificity as to which general objections apply to their responses, the State is unable to discern exactly what the George's Defendants admit or deny. As set forth above in sections III.A through III.C, the George's Defendants' objections to request no. 10 are without merit and should be overruled. The State is entitled to a proper and straightforward answer to its request.

N. The George's Defendants' objections to request no. 11 should be overruled

Request no. 11 reads: "Admit that poultry waste contributes a greater amount of pathogens to the portion of the Illinois River located in Oklahoma than waste water treatment plants, cattle manure, manure from wildlife and septic systems combined." Exs. 1 & 2. The George's Defendants have responded to the request subject to and without waiving their General Objections. Exs. 3 & 4, p. 6. As a result of the litany of objections set forth in the General Objections and the lack of specificity as to which general objections apply to their responses, the State is unable to discern whether the George's Defendants' inability to respond derives from lack of information or because of the alleged deficiencies in the State's request. As set forth above in sections III.A through III.C, the George's Defendants' objections to request no. 11 are without

merit and should be overruled. The State is entitled to a proper and straightforward answer to its request.

O. The George's Defendants' objections to request no. 12 should be overruled

Request no. 12 reads: "Admit that poultry waste contributes a greater amount of phosphorus to Lake Tenkiller than waste water treatment plants, cattle manure, manure from wildlife, septic systems, commercial fertilizers and stream bank erosion combined." Exs. 1 & 2. The George's Defendants have responded to the request subject to and without waiving their General Objections. Exs. 3 & 4, p. 6. As a result of the litany of objections set forth in the General Objections and the lack of specificity as to which general objections apply to their responses, the State is unable to discern exactly what the George's Defendants admit or deny. As set forth above in sections III.A through III.C, the George's Defendants' objections to request no. 12 are without merit and should be overruled. The State is entitled to a proper and straightforward answer to its request.

P. The George's Defendants' objections to request no. 13 should be overruled

Request no. 13 reads: "Admit that one or more of your poultry growing operations located in the Oklahoma portion of the Illinois River Watershed is not in compliance with its animal waste management plan." Exs. 1 & 2. The George's Defendants object to this request on the grounds that it is "overly broad, vague, and ambiguous in that there is no limiting time frame parameters." The George's Defendants then respond to the request subject to and without waiving this objection and their General Objections. Exs. 3 & 4, p. 7. As a result of the litany of objections set forth in the General Objections and the lack of specificity as to which general objections apply to their responses, the State is unable to discern whether the George's Defendants' inability to respond derives from lack of information or because of the alleged

deficiencies in the State's request. Moreover, the request utilizes the word "is," indicating that it seeks information regarding the present. An objection to the present compliance of the George's Defendants' poultry growing operations with their respective animal waste management plans is without merit. As set forth herein and above in sections III.A through III.C, the George's Defendants' objections to request no. 13 are without merit and should be overruled. The State is entitled to a proper and straightforward answer to its request.

IV. Conclusion

As noted above, "[r]equests for admission are not games of 'Battleship' in which the propounding party must guess the precise language coordinates that the responding party deems answerable." *House*, 232 F.R.D. at 262. Yet that is precisely the game the George's Defendants have played in responding to the State's requests. It is improper. The State's definitions are not objectionable. Nor do the George's Defendants' other objections have any merit. Accordingly, the State's motion to determine the sufficiency of the George's Defendants' responses should be granted in its entirety.

Respectfully Submitted,

W.A. Drew Edmondson OBA # 2628
 Attorney General
 Kelly H. Burch OBA #17067
 J. Trevor Hammons OBA #20234
 Tina Lynn Izadi OBA #17978
 Assistant Attorneys General
 State of Oklahoma
 313 N.E. 21st St.
 Oklahoma City, OK 73105
 (405) 521-3921

/s/ M. David Riggs

M. David Riggs OBA #7583
 Joseph P. Lennart OBA #5371
 Richard T. Garren OBA #3253
 Douglas A. Wilson OBA #13128

Sharon K. Weaver OBA #19010
Robert A. Nance OBA #6581
D. Sharon Gentry OBA #15641
Riggs, Abney, Neal, Turpen,
Orbison & Lewis
502 West Sixth Street
Tulsa, OK 74119
(918) 587-3161

James Randall Miller, OBA #6214
Louis Werner Bullock, OBA #1305
Miller Keffer & Bullock
222 S. Kenosha
Tulsa, OK 74120-2421
(918) 743-4460

David P. Page, OBA #6852
Bell Legal Group
222 S. Kenosha
Tulsa, OK 74120
(918) 398-6800

Frederick C. Baker
(admitted *pro hac vice*)
Lee M. Heath
(admitted *pro hac vice*)
Elizabeth C. Ward
(admitted *pro hac vice*)
Elizabeth Claire Xidis
(admitted *pro hac vice*)
Motley Rice, LLC
28 Bridgeside Boulevard
Mount Pleasant, SC 29465
(843) 216-9280

William H. Narwold
(admitted *pro hac vice*)
Ingrid L. Moll
(admitted *pro hac vice*)
Motley Rice, LLC
20 Church Street, 17th Floor
Hartford, CT 06103
(860) 882-1676

Jonathan D. Orent
(admitted *pro hac vice*)
Michael G. Rousseau
(admitted *pro hac vice*)
Fidelma L. Fitzpatrick
Motley Rice, LLC
321 South Main Street
Providence, RI 02940
(401) 457-7700

Attorneys for the State of Oklahoma

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of September, 2007, I electronically transmitted the above and foregoing pleading to the Clerk of the Court using the ECF System for filing and a transmittal of a Notice of Electronic Filing to the following ECF registrants:

Frederick C Baker fbaker@motleyrice.com, mcarr@motleyrice.com;
fhmorgan@motleyrice.com

Michael R. Bond michael.bond@kutakrock.com, amy.smith@kutakrock.com

Vicki Bronson vbronson@cwlaw.com, lphillips@cwlaw.com

Paula M Buchwald pbuchwald@ryanwhaley.com

Louis Werner Bullock LBULLOCK@MKBLAW.NET, NHODGE@MKBLAW.NET;
BDEJONG@MKBLAW.NET

Gary S Chilton gchilton@hcdattorneys.com

Robin S Conrad rconrad@uschamber.com

W A Drew Edmondson fc_docket@oag.state.ok.us, drew_edmondson@oag.state.ok.us;
suzy_thrash@oag.state.ok.us.

Delmar R Ehrich dehrich@faegre.com, etriplett@faegre.com; ; qsperrazza@faegre.com

John R Elrod jelrod@cwlaw.com, vmorgan@cwlaw.com

Fidelma L. Fitzpatrick ffitzpatrick@motleyrice.com

Bruce Wayne Freeman bfreeman@cwlaw.com, lclark@cwlaw.com

D. Richard Funk rfunk@cwlaw.com

Richard T Garren rgarren@riggsabney.com, dellis@riggsabney.com

Dorothy Sharon Gentry sgentry@riggsabney.com, jzielinski@riggsabney.com

Robert W George robert.george@kutakrock.com, sue.arens@kutakrock.com;
amy.smith@kutakrock.com

James Martin Graves jgraves@bassettlawfirm.com

Tgrever@lathropgage.com

Jennifer Stockton Griffin jgriffin@lathropgage.com

John Trevor Hammons thammons@oag.state.ok.us, Trevor_Hammons@oag.state.ok.us; Jean!_Burnett@oag.state.ok.us

Lee M Heath ! lheath@motleyrice.com

Theresa Noble Hill thillcourts@rhodesokla.com, mnave@rhodesokla.com

Philip D Hixon phixon@mcdaniel-lawfirm.com

Mark D Hopson mhopson@sidley.com, joraker@sidley.com

Kelly S Hunter Burch fc.docket@oag.state.ok.us, kelly_burch@oag.state.ok.us;
jean_burnett@oag.state.ok.us

Tina Lynn Izadi; tina_izadi@oag.state.ok.us

Stephen L Jantzen sjantzen@ryanwhaley.com, mantene@ryanwhaley.com;
loelke@ryanwhaley.com

Bruce Jones bjones@faegre.com, dybarra@faegre.com; jintermill@faegre.com;
cdolan@faegre.com

Jay Thomas Jorgensen jjorgensen@sidley.com

Raymond Thomas Lay rtl@kiralaw.com, dianna@kiralaw.com

Krisann C. Kleibacker Lee; kklee@faegre.com

Nicole Marie Longwell Nlongwell@@mcdaniel-lawfirm.com

Archer Scott McDaniel smcdaniel@mcdaniel-lawfirm.com

Thomas James McGeady tjmcgeady@loganlowry.com

James Randall Miller rmiller@mkblaw.net, smilata@mkblaw.net; clagrone@mkblaw.net

Charles Livingston Moulton Charles.Moulton@arkansasag.gov,
Kendra.Jones@arkansasag.gov

Indrid Moll; imoll@motleyrice.com

Robert Allen Nance rnance@riggsabney.com, jzielinski@riggsabney.com

William H Narwold bnarwold@motleyrice.com

Jonathan Orent ; jorent@motleyrice.com

George W Owens gwo@owenslawfirmpc.com, ka@owenslawfirmpc.com

David Phillip Page dpage@edbelllaw.com, smilata@edbelllaw.com

Robert Paul Redemann rredemann@pmrlaw.net, scouch@pmrlaw.net
Melvin David Riggs driggs@riggsabney.com, pmurta@riggsabney.com
Randall Eugene Rose ! rer@owenslawfirmpc.com, ka@owenslawfirmpc.com
Michael Rousseau ; mrousseau@motleyrice.com
Robert E Sanders rsanders@youngwilliams.com,
David Charles Senger dsenger@pmrlaw.net, scouch@pmrlaw.net; ntorres@pmrlaw.net
Paul E Thompson , Jr pthompson@bassettlawfirm.com
Colin Hampton Tucker chtucker@rhodesokla.com, scottom@rhodesokla.com
John H Tucker jtuckercourts@rhodesokla.com, lwhite@rhodesokla.com
Elizabeth C Ward lward@motleyrice.com
Sharon K Weaver sweaver@riggsabney.com, lpearson@riggsabney.com
Timothy K Webster twebster@sidley.com, jwedeking@sidley.com
Gary V Weeks !
Terry Wayen West terry@thewestlawfirm.com,
Edwin Stephen Williams steve.williams@youngwilliams.com
Douglas Allen Wilson Doug_Wilson@riggsabney.com, pmurta@riggsabney.com
P Joshua Wisley ; jwisley@cwlaw.com, jknight@cwlaw.com
Elizabeth Claire Xidis cxidis@motleyrice.com
Lawrence W Zeringue lzingue@pmrlaw.net, scouch@pmrlaw.net

Also on this 11th day of September, 2007 I mailed a copy of the above and foregoing pleading to:

David Gregory Brown
Lathrop & Gage, LC
314 E. High St.
Jefferson City, MO 65101

Thomas C Green
Sidley Austin Brown & Wood LLP
1501 K ST NW
WASHINGTON, DC 20005

Cary Silverman

Victor E Schwartz

Shook Hardy & Bacon LLP (Washington DC)

600 14TH ST NW STE 800

WASHINGTON, DC 20005-2004

C Miles Tolbert

Secretary of the Environment

State of Oklahoma

3800 NORTH CLASSEN

OKLAHOMA CITY, OK 73118

/s/ M. David Riggs

M. David Riggs